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A Winter Evening.

J. L. COONTZ.

MINGLED yon the deepening sky,
Dark dressed within the starr'd east
Sends sisters gown'd, before her step
To guard th' unbroken even feast:

Full yawning deep the cavern sky
Consuming sends its paths abroad,
Fields submissively worn by toil
Await the patient coming load.

Beyond, the road in swallow flight
Skims out to forest luring night,
And she that molds the coming reign
Forgets herself unto the sight.

Straggling, ragged, grey fields roam
Gathering tresses for their rest.
So slowly sunken, clouds for maids
Night's queen disrobes within the west.

The Jury System.

MICHAEL A. DISKIN (LAW), '07.



LAW may be said to be the highest or supreme position of existence in the natural world. The application of all forces known to science is governed by a certain fixed principle, and no force has ever deviated from the set course. If we have a given cause the effect is inevitable, whether the cause be the breaking of a driver on the engine of a fast-express train or the stopping of the earth for the smallest fraction of a second in its rotary course. We have only to observe the dawn and evening of day, the flowing and ebbing of tide, and they manifest most obviously the inexorable justice of

its law in the recurrence of the seasons. To these natural laws man finds himself forever obliged; he is always waited upon by them, and they finally are the means of his destruction.

It is easy for men devoid of civilization to make regulations concerning mutual rights and obligations. The right of life and liberty will stand clear and paramount; but the one great difficulty arises in purporting some means by which these natural rights may be separated and mutual obligation protected and enforced. In pursuing the history of law we must first inquire into the devices by which society has evolved in ascertaining the truth when there happened to be a controversy in the actions of men in their relation toward each other.

Among governments the law-making power first takes cognizance of the criminal side, and every action of man which is injurious to society is punishable. As man becomes more civilized the list of crimes is shortened. The punishment inflicted for an offence against society is not in the way of revenge but as an example. Punishment may be said to be half justice and half outrage. The idea of justice embodied with pity, the leaven of consideration for the offender, can not be attributed to human origin. We can not say that pity, or consideration for a wrong-doer, would even enter into a law-making power, unless such power was influenced in some way by Christianity. In studying the conditions of non-Christian countries we find the old mandate of "an eye for an eye" and a "tooth for a tooth" most manifest. The idea of trial or arbitration for disputants was slow in coming into force and slow in improvement. Some nations used fire, water or ordeals as instruments for ascertaining

the truth. In all these cases the dispute was left to God, and the Deity when called on was expected to work a miracle. Later on in the world's history we find intricate and complicated problems where truth was involved submitted to a jury for trial. The origin of trial by jury, or the jury system, has been traced to Athens, Germany and Normandy.

The Athenian origin seems most acceptable to me and consists in the transplanting of the system from Athens to Rome and from Rome to England. The great principle of the Solon system was unquestionably this noble one: "That every citizen should enjoy the inestimable right of being tried by his peers and bound only to the laws to which he had given his consent." In Athens we have a jury with the same forms as those in England, the exception arising in the difference between the two political constitutions. Here when the cause was ready for hearing, the jury, who were the triers, were chosen by ballot; the essentials necessary to make them competent were the power of comprehending, strength of character, and disinterestedness. They numbered from five hundred to five thousand, and in some causes even more. In criminal cases, if the accused had half the number of the juror's total vote he was acquitted.

From the Athenian jury system we pass to the one established by the Romans. About sixty years after the expulsion of the Tarquins, the Romans, agitated by dissensions between the Patricians and the Plebeians on various subjects, and particularly on judicial government, sent commissions to Athens to obtain a transcript of the laws of Solon and adopted these principles as part of their government. Among the Romans there was a double selection of jurors; a number of noted citizens were chosen by ballot and from this selection eighty-one jurors were elected upon every case. Each side was at liberty to challenge fifteen, thus leaving the verdict to the consideration of fifty-one men. This *rejectio judicem* is often mentioned by Cicero.

When Julius Cæsar by conquest extended the power of Rome into Gaul and Germany he thereby reduced the province to the dominion of Rome and introduced her

laws. Cæsar also visited Britain, and Claudius, one of his successors, having won many victories over the inhabitants of the island, finally planted four colonies in it. The one established at Malden was intended not so much to check the rebel Britons, we are told by Tacitus, as to accustom them to the Roman laws. His design was crowned with success, and the Britons became admirers of his laws. When the Romans finally retired from England to protect their empire, the Britons resumed in part their former customs, but they blended them somewhat with the Roman laws. As trial by jury was part of the judicial policy of the Roman system it is more than probable that this among other parts was retained and continued by the Britons.

Later, in England we find where a fair-minded disputant said to his adversary: "We will call together the most intelligent and reliable of our neighbors, state the circumstances to them, and abide by their decision;" and the number thus chosen happened to be twelve. This custom spread from parish to parish. It is very evident that the first clear view we have of the jury system, the panel, was chosen from among the persons who were most familiar with the circumstances and subject-matter in dispute, and came from the place where the cause of action arose. Thus we can trace the system down to our present one of to-day.

Now, as the first duty of civil government is the protection of the life, liberty and property of the individual—all direct means for moral and physical elevation are second to this paramount object—the most important branch of municipal law, then, is that which provides for the detection and punishment of crime. Other departments of legislation, regulating the private and public rights of citizens, are intended to maintain and increase the temporal prosperity of each member of the community, and to aid the growth of the whole in power and political influence. This doctrine reaches to the very foundation of social order, and preserves the entire fabric from absolute disintegration.

However consonant with the lessons of experience and the teaching of enlightened social philosophy, with the modes and

gradations of punishment, yet if there exist such faults or disturbing forces in the operation of judicial power or process that the course of justice is unwarrantedly delayed, or the guilty escape and the innocent suffer, then the penal code is comparatively valueless. The object of all judicial investigation is the discovery of truth. Certain forms or methods of procedure are prescribed in the search after truth, and these principles must be founded on reason and general experience.

The English-speaking people justly boast of the institution of trial by jury as the palladium of their civil rights; and in theory it certainly is an excellent method of arriving at the truth in legal contentions, but in practice it is too often a failure in its unjust correction or protection of crime.

Now, what are the practical defects that so materially affect its theoretical usefulness and so frequently render it an impediment to justice? This question is one of supreme importance; one which concerns every lover of free institutions, and unless we discover and appropriate an efficient remedy, there is danger that the already widespread dissatisfaction of trial by jury will assume more threatening aspects and eventually fall into disuse.

The principal defect and remedy I wish to point out in this article is the requirement of unanimity. One of the strongest arguments advanced in favor of this rule is its ancients. The judicial wisdom and legislative policy of five centuries are cited as reasons for its retention. To this argument I would ask, would any person venture to cite views of philosophers or masters of statecraft, astronomy and political economy of five hundred years back as authorities on these different subjects in applying them to conditions of to-day? It may be a fact that certain forms are useful and even indispensable to the progress of society toward a higher degree of civilization; but it is also a fact that a condition may be reached when the progress of society will be retarded by retaining them.

Every institution, however useful in the past, whatever may be its claim on the reverence or affection of mankind, must sooner or later be brought to the test of present and practical worth. We are told that in the bank of England there is a

coin-testing machine, and when a coin is found to be wanting in weight it is cast aside by this mechanical apparatus. Now, we can compare our systems of to-day to so many coins and the present conditions to the weighing machine, and when these systems do not come up to the standard they should suffer the same fate as the deficient coins.

Although it is true that in former times the concurrence of twelve jurors was required in deciding a given case, yet it is also a fact that those who would not agree with the majority were discharged from serving on the case and new men supplanted in the case of this minority, and this means was continued until the twelve agreed in their opinion. It can be safely stated that the requirement of unanimity grew out of the anomaly of having the functions of jurors and witnesses united in the same person.

Judge Cooley, in his edition of Blackstone, characterizes unanimity "as repugnant to all experiences of human conduct and understanding," and further states: "It could not have been introduced into practice by a deliberate act of legislature." In 1876 Governor Carpenter of Iowa, in his message to the legislature of that state, called it "an antique absurdity which has too long fettered the administrators of justice."

In examining the jury system of foreign lands we find that in Scotland in civil cases the twelve jurors had to concur in their opinion. But this requirement created so much dissatisfaction that in 1845 it had to be abolished by a law which provided that after six hours' deliberation a verdict might be taken from the three-fourth majority. By the code of the Bahama Islands it is provided that in all criminal cases other than capital, and in all civil cases, a valid verdict may be returned by two-thirds of the jury.

In most European countries trial by jury is known only in criminal cases; the jury does not find a general verdict, but only answers questions concerning aggravating or mitigating circumstances. And in these cases in France, Italy and Germany, a simple majority is sufficient. In Austria at least eight votes are required. It is a fact that in all other countries except England and the United States the jury

may decide on a majority; and in the United States there are three states in which in civil actions a three-fourth majority is sufficient for a valid verdict. Thus we see that in the United States the rule of unanimity has been departed from.

In considering the arguments outside of ancients, advanced by defendants of the requirement of unanimity, what reasons do we find in support of their assertions?

First, they state as a necessary consequence of the present rule, that each member of the jury knowing that his individual concurrence in the verdict will be exacted, becomes more impressed with the sense of his own responsibility in the matter before him, and it therefore necessitates his whole attention. Now, I will answer this by stating that the oath taken by the juror, if he is at all conscientious, impresses him with the same sense of his important duty; then again it is a fact that under the present system jurors often deposit ballots contrary to their convictions with the intention of "drawing out" other jurors, and this is often repeated, and the juror knows his vote will not be conclusive unless the other eleven happen to agree with him.

Second, they state that the rule of unanimity secures full and effective discussion and deliberation of the case by the jurymen. To this I will say that experience proves the juror's mind is finally made up before leaving the jury box, and the juror who does not enter the jury room with his mind fixed one way or the other is a weak-minded person and will vote with the majority every time, and his opinion, therefore, is of no account.

Third, the advocates of unanimity argue that the confidence engendered in the public mind in decisions of a tribunal which speaks with an individual voice is so great a benefit it should not be given up. Now past experience proves conclusively that in a case attracting public attention, where the jury disagree, or the evidence shows a compromise on its face, public opinion becomes enraged at the stubbornness and corruption of the one or two jurors who would set up their opinion against the judgment of the majority. Now, what can be advised against the principle of unanimity?

First, it ignores the fact that all men are not constituted alike. As men differ in physical constitution so will they differ in mental and moral make-ups. Their opinions are influenced greatly by their preconceived ideas upon religion, ethics, politics, etc. Their judgment is formed by environment and habits of life. What is man's mind but the result of countless impressions received during a lifetime? and as our experience and surroundings are different, it logically follows that our mind and the operation of this faculty will not be similar. Add to this the complicated matters that arise for the concurrence of the jurors' opinions. Is it possible that all men should have the same power of discerning the truth? In every body of men there is a "crooked stick."

Take for an illustration the Twelve Apostles, a body chosen to promulgate the teachings of the Maker of all things; yet even in this august association we find one dissenting. How can we look for anything supernatural in a body of common men? There may be one of the twelve jurors without common sense, or common honesty; he may be a personage who has a hobby for differing with everybody on every possible subject; he may at least have some kind of eccentricity and no special education. Is it not a fact that on this twelfth man hangs the fate of all who trust themselves to the jury system? This one man can hinder justice, and usually does it. The good sense and good judgment of eleven men may have decided a case in a given way, but the narrow and prejudiced mind of the twelfth man is enough to make their opinion of no force.

Why should we hesitate to accept the verdict in which a small minority does not concur? If you present an object to the view of twelve men, eleven of whom pronounce it to be black, and one claims it to be green, will any sane man doubt for a minute that the one is color blind? Now, if at the end of a trial eleven jurors say the defendant is "guilty" and one says he is "not guilty," can the doubt be any the less that the one is color blind morally or intellectually? Call the defect what you may, be it stubbornness or corruption, the one man is abnormal and presents a case of mental aberration.

Second, the absurdness of the unanimity required is that it gives one mind weight equal to that of eleven. It is unsound in that eleven men, after forming an intelligent conclusion, may be defeated by one crank; it lacks moral strength in that it is a mark of professional jury packers.

In regard to jury packing, it is a well-known fact that there are men conversant with the art of packing jurors in every large city. In the present system, if they secure one man in the selected jury to accept their bribe they are perfectly sure of a disagreement. In the case of a majority, at least four men would have to be secured for the purpose of corruption, a thing not so easily accomplished.

As to criminal cases, the unanimity principle is defended on the ground that among the twelve jurors there is one whom the evidence failed to convince of the guilt of the prisoner, there exists such a reasonable doubt as ought to preclude a conviction. If this argument is sound, then it should logically follow, that the accused should be acquitted whenever one juror believes him not guilty. This is not the case; the absurdity of the unanimity rule is carried so far that even if eleven men vote for acquittal and one for conviction, and there is hardly any doubt of the accused's innocence, he can not be acquitted; the laws require that he be put in jeopardy again.

Now, suppose in the trial of a noted criminal that one juror holds for acquittal and eleven hold for conviction, under such condition the jury is discharged and the accused is put on trial again. How many men could be found in the country or state where the trial occurred that would be competent to serve on the jury? With the exception of illiterate, narrow-minded or prejudicial men I do not believe that one could be found who did not scan the daily papers during the trial and one who has not formed a decided opinion as to the guilt of the accused based on sworn testimony. All these men would therefore be incompetent; and the only parties obtainable would be so ignorant and narrow-minded in their views that the decision arrived at could not be just. In other words, a disagreement of the jury in a case like this would mean the

eventual escape from all punishment of the perpetrator of the crime.

But the escape of the criminal is not the most serious consequence of such faulty justice. Another result more to be dreaded is the demoralizing effect upon the community. It has a tendency to destroy the faith of the people in the arm of justice and in the efficiency of the safeguards provided for public welfare; that faith which is the foundation of free government. It breeds contempt for the law and encourages anarchism.

Let us consider the inconsistency of our system. Legislative measures involving the welfare and happiness of millions of people are decided by a majority. In grand juries unanimity is not required, though on their decision depends whether a man's life will be put in jeopardy. Unanimity is not required to impeach the president. In spite of all these analogies we continue to pollute the foundation of justice and upset the judgment of eleven honest, intelligent men and make jury trials a farce.

The rule of unanimity may have worked well in olden times when competent jurors were obtainable; but in our present age with the enterprising press, which supplies millions of people with the news even to the minutest detail, the principle of unanimity is an obstruction to the administration of justice, and shields crime. In England this system may be accomplished with lesser evils, for the average material for jury service is of higher standard and the judge has more scope in his charge, discussing as he does the evidence in all its bearings, and the jury in the majority of cases find a verdict without leaving their seats.

Change of circumstances, the necessary result of the march of progress, should be accompanied by appropriate change of legislation. We have abolished slavery; have made important innovations in social laws; in fact, have made all our conditions comply with the present social state. Now, why not eliminate the last relic of barbarism, the rule of unanimity? The rule of decision that we should adopt, when we abolish the principle of unanimity, is a matter with which the legislatures will have to concern themselves after the amendment is made to the Constitution.

After studying the successful system

operating in Europe, where the majority decide, I would advocate a two-third majority; and if necessary to secure greater deliberation, a system could be established whereby a verdict returned within eight hours should be unanimous; after that time, and within eight hours thereafter, a verdict signed by eleven men may be given; after eleven hours and within seven hours thereafter one signed by ten men; after eighteen hours and within seven hours thereafter one signed by nine men; after twenty-five hours one given by eight men may not be accepted. This change would give the jury system what a body playing such an important part in the liberty and happiness of the American people should be, and also increase the confidence of the people in the arm of justice and make their liberty the more secure, thereby imparting to them that faith which is the foundation of every free government.

Varsity Verse.

A LIGHTER VEIN.

A LIGHTER vein doth mark my mood
And merry laughter running,
Through all myself doth give me food
To set my heart a-thrumming.

I praise the child that seeks my bow'r
Thinly clad with pleasure;
I clasp his hand, I love the hour
Whene'er I trod his measure.

When sadness comes to steal away
Each moment of my leisure
I call the child of sunshine gay
To bask in smiles of pleasure.

My life is full of sorrow shoals,
But skimming down its river
I call to laughter ere the folds
Of sadness makes me quiver.

J. L. C.

SOME M. O. LIMERICKS.

There once was a man Edward Dunne
Who was 'specially fond of a pun
But 'twould stir up his ire
Should a joker inquire
"Is it right that your name's U. N. Dunne?"

There's a famous old city named Glasgow
Which owns its street railway and gas Co.,
Though they cut fares in half
Still the people won't laugh,
For they're taxed for this M. O. fiasco.

W. J. D.

The First Letter after Vacation.

—
L. M. H.
—

NOTRE DAME, IND.

Jan. 16, '07.

DEAR JIM:—I am back—back amid the heartless bells and mournful mutterings of the old clock in the steeple. I have come not long since from the chapel in which I have (I am honest with you) prayed, not for my soul, but for God to hurry along the hours and days that will bring summer once again. It is Wednesday night and the rest of the fellows (I find consolation in that—that there are others) have passed quietly to their rooms, to do perhaps as I am doing, or to read the *Saturday Evening Post* which we always get on Wednesday night; and here in my one-rockered room, surrounded by these four white walls which have been my home for as many years, I pour out my lonesome soul to you.

I fell into the daily routine, not without a jar, but nevertheless quite gracefully. I am awakened in the early morning by the same heartless bell which nearly drives me frantic; awakened to the stern reality of a cold room and the absolute necessity to hurry, if I am to get to morning prayer. I eat my breakfast, and in twenty minutes later I am in class; one class ends that I may go to another. At nine-thirty I read my mail, if you have written to me, for no one else ever does. At ten I study, that is I look through the books, and if it happens that I catch a little knowledge on the way past, I walk into my eleven o'clock class, daring the professor to call on me. That class ends the first half of the day. During the second period of the daylight—half of the twenty-four hours which make the day—I go to more classes, but at three-thirty I take a walk; a walk over the beautiful heaven-sent snow—that is what the winter-loving man would call it—but from the view-point of a warm-weather admirer, I find that this beautiful out-door world holds nothing for me but cold feet, cold ears, and an everlasting desire for summer with its gentle breezes, its moonlight nights, and its shady trees.

At night I go down into the smoking room, and to-night as I sat there swayed by a spirit of sentiment, perhaps foolish, I found myself drifting back over the years when I was in high school, when my daily work consisted of one arm of wood and a pail of water before school in the morning, and one arm of wood and one pail of coal in the evening after school. I remembered to-night how my father had told me that those days were the best days I would ever see, how never again would I be as happy and as care-free as I was then, and I remember how I thought my father did not understand the smallness of the world in which I lived (being compelled to do so because of my youth); I thought he did not appreciate the soul within me which demanded higher things. He did not know, I thought, how I was different than he was, when he was my age, and I felt a sort of pity for him living there in that little narrow world of his, and closed my ears to his fatherly advice to make those days last as long as I could.

To-night, I say, I thought of them, and if any mortal man ever regretted his childhood days I did mine. I would give six months off the end of my life to be there now and live them over again.

But, dear Jim, it is useless, this talk, and I will tire you no longer. Take good care of yourself.

Your heart-broken TOM.

*
*
*

One month later.

NOTRE DAME, IND.

Feb. 16, '07.

DEAR JIM:—The baseball team is coming great, and yours truly will be the star third sacker of the college world. I have a cinch on the position now and am going to hang on.

Classes are coming O. K., and I am storing up my share of the stuff to startle the world with when I get my "dip" under my arm.

I am glad you are coming down here next year, Jim, for it is the best place in the world. I often feel sorry for you when I think of you back there in that little town, where there is never anything doing. Lord, I remember when I was in high

school, I thought I would die sometimes; but cheer up, Jimmy, you will get over it. It's tough. I know, but it won't last forever. I'll be here next year with you and see that you get in all right, and then you will wonder how you ever lived before. There's nothing to that talk about the good old times in High School—nothing to it, I say. You've got to come to college and wear off the rough edges before you know how to have a good time. Lord sake, but some of these fellows who come here off the farm look like the very devil, (I did too, I suppose); their clothes don't fit, and they're all wrong all over. But after you have been here a year the edges will core off, and some of those boys wear so smooth that they can in fact slide around instead of taking the trouble to walk.

You ask about the girls around here. Well, we don't keep many right here at the school; but we have a town down here that turns them out "as ordered," you will not need to worry about your social stunts. You can take the full course if you so desire, and there isn't a lodge in the world that can give you so many degrees.

Mentioning the weather by the way, I must tell you it's great. About six inches of snow on the ground, good skating on the lake and the best winter weather you ever saw.

We have a great time here at night, Jim. The best bunch of fellows in the world are here, and after supper we go down in the smoking-room, some one plays the piano; and they are "there," when it comes to playing the piano. We have a fellow by the name of Scales that can play better than the man who made music. God bless him (the man who made music, I mean)—although Scales is a good fellow. No, I will not get home Easter, I prefer to stay here as long as I can. I get all I want of that town of ours during the summer time, when it is so hot one can not breathe. Winter for me every time. Well, Jim, old boy, I've got to go. I am going down town and want to make the car. Write whenever you feel so inclined. It's a great world, isn't it, Jimmy?

As ever
TOM.

A Reverie.

WILLIAM J. HEYL.

I SIT before my study,
 With my books in order ranged,
 One open book before me,
 Where my gaze seems so unchanged.

But I see beyond its pages,
 And I wander far in space;
 Where looms up through the stillness,
 Some one's smiling face.

And I linger there with pleasure,
 As I see that picture true;
 It brings back olden memories,
 And tells me things of you:

Of times we sat together,
 In the moonlight by the stream,
 As the softly flowing waters
 Made music to our dream.

I almost hear you talking,
 In your happy, smiling way;
 And see your blue eyes dancing
 With the words they seem to say.

And you were glad to see me
 When I'd be long away;
 You whispered words consoling
 To make my sad heart gay.

But all those times have faded,
 Realities are dreams;
 I'm off at school, and oh!
 How lonely school-life seems!

"What Might Be in 'Em?"

VARNUM A. PARRISH, '09.

The murder of Ellen Lowry by Pete Rowan had caused considerable excitement in Burdick, as the killing of a white by a black always does in a southern town. The people were all aroused over the affair. Many declared that if Pete were caught in the vicinity of Burdick the authorities would never get him to the county jail alive. Hatred for the negro burned at its highest in this little town after Rowan's bloody deed.

The morning after the eve of the horrible act everyone in Burdick was intensely interested in the capture of the murderer. Many volunteered their personal assistance.

Authorities lost no time in investigating the clues and getting on the tracks of the black criminal. The leader among those engaged in this piece of detective work was the town marshal, Al Whitney.

This Al Whitney was one of that particular kind of marshalls one usually finds in a town of one thousand. His duties were the meeting of trains, riding around on the hotel bus or the dray wagon, and arresting, now and then, an obstreperous drunkard or vagabond for disturbing the peace. Al was most important for the preservation of order on circus days, the Fourth of July and other special occasions when hilarity prevails. At such times he was never found wanting. He was shrewd and clever when it came to preserving peace, even if it did bother him a little to read the licenses of peddlers and street fakers.

Whitney was a Yankee and did not have that inherent hatred for the negro, although he had no particular love for him. He said that he believed in doing things according to law, and if he caught Rowan he would see that he was punished by the law and not by the mob. Many of the best and more level-headed citizens were of the same opinion. But there was a crowd, and no small crowd either, that demanded that Rowan be hanged as soon as captured on the first tree available.

About three-fifteen in the afternoon of the first day, Rowan was put into the calaboose by the deputy sheriff, Sherwood, and the town marshal. None of the townfolk knew that the murderer was captured except Tommy Mann, the butcher boy, who happened to be passing that way when the prisoner was being locked up.

The calaboose was right along the tracks of the I. R. & O. The next train was to leave for Cedarville, the county seat, at four o'clock. Deputy Sherwood and Al, the marshal, had hoped to keep Rowan's capture unknown to the citizens until four o'clock, and then, as inconspicuously as possible, board the train for the county jail, for they knew that Rowan's life was not safe in Burdick, and they apprehended the trouble they would have in keeping the mob from getting the negro, if the townspeople once found out that he was in the calaboose.

Tommy Mann had the news spread in no time. Ten minutes had not passed until over a hundred men and boys had gathered around the calaboose. The crowd was soon enlarged by curious women whose refinement was not sufficient to create in them aversion for the sight of the rash and brutal acts that mobs usually commit. As has been said before Whitney was a clever old fellow, and the more level-headed citizens felt assured that Al would break up the mob some way or other and get Rowan to the county jail in safety.

"Jest you mind me, if we ken jest stave 'em off till the train gits in, we'll git the niger out of Burdick all right. I pit lots of faith in that ere scheme of mine over the door," Al had said to Sherwood before the mob had gathered, as he looked down the street and saw fifteen or twenty fellows coming on the run from toward the post-office with ropes, stones and clubs in their hands. But Al had begun to get a little afraid now about his ability to keep the mob off until train time. Fully two hundred were now gathered in front of the little calaboose. The deputy and the marshall stood with revolvers in their hands before the door of the little building. It was just thirty minutes till train time. The mob became more restless, more excited, and pushed back and forth.

When it came to preserving order, old Al was absolutely fearless. Some fellows suggested firing the building. The marshall threatened to shoot the first man that tried to fire the calaboose. Nearly every one in the crowd knew that Al meant what he said, and for a while they were withheld from action by the fear of his threats. But excitement and enthusiasm began to quench their fears. They got bolder and bolder.

"Get an axe; we'll break in the door," said Shonts, the jeweler's son.

Soon Jimmie Austin came up on the run with an axe in his hand. Not ten seconds later half a dozen other fellows came running up with axes. But no one dared to use them; no one dared to pass the muzzles of the officers' guns. It was now five minutes to four.

"Did you notice them boxes up above the cooler door?" said Mrs. Ryan to Mrs. Howard.

"Six of 'em, ain't there? About the size of cracker boxes. Do you know, Mrs. Jones, I never did see them boxes there before," said Mrs. Howard turning to a third woman.

"Did you all ever see them boxes before Mrs. Lee?" said Mrs. Jones.

"No, I ain't never seen 'em. They 'pear to be sealed up most awful tight. What might be in 'em?" said Mrs. Lee.

"Dynamite," suggested Mrs. Jones.

The attention of the whole crowd was soon directed toward the boxes.

"One pull of this ere string drops the hull six," said Al, as he pointed to a short piece of rope that hung down just in his reach from the shelf above upon which the boxes were placed.

"Whole six what—what's in 'em?" shouted one of the crowd.

"Never mind what's in 'em, jest try to break in the door if you want to find out," said the marshall.

Number six was now in sight. Two minutes more and she would be pulling out of the station for Cedarville. Would Rowan be on that train or in the hands of a crazed mob at the end of the two minutes?

The enthusiasm of the mob was abated for a minute or so by their curiosity to find out what was in the boxes, but the desire to get the negro soon displaced their curiosity. Number six pulled up at the station.

"You'll never get that niger on that train alive," said Mark Davis, one of the leaders of the mob.

The train at the station was just about to pull out. Al unlocked the calaboose door, then stood holding the short rope that was fastened to the shelf above. Sherwood went into the building to get Rowan. The moment the deputy and Rowan appeared at the door the mob started for the negro.

At the same instant the old marshall jerked the rope with one hand and pulled his cap down over his eyes with the other. Six hives of bees came tumbling down in front of the building.

In thirty seconds the marshall, deputy and murderer were on the train, which was pulling out for Cedarville, and there was no sign of a mob anywhere.

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Notre Dame, Indiana, February 2, 1907.

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—Evidently we "got in wrong" ourselves—with a few—on that last issue. Our new friend, the original E. Percival Snob, seems to have slightly misrepresented some one in declaring what he thought about him. Whatever the case is, it is regrettable that any fact should be misrepresented; and if the man happens to be a coach we are sorry to have said any thing about him—in that capacity. So much about the particular case, but about the column in general we would crave a word.

For the benefit of those who up to the present time do not understand what is meant by the Social Whirl we hasten to explain. It is our aim to make our paper better, especially as regards local matter. Something in the order of an inspiration struck the editor one lonely night, and he installed E. Percival. If we are missing our guess, that the column will add to the general interest, we are sorry for blundering the guess.

If we print it, we hurt some one's feelings, if we don't we're a bit archaic and second rate; if we knock some one we're cruel and unprincipled and everything short of a gentleman, if we don't we're tame and

the column lacks spice; if we don't 'knock' ourselves, then we're indulging in personal retaliation on some poor unsuspecting mortal, if we do we're—and without doubt—lacking in good sense. So there we are. Just now we have the poker, and of course there are the usual few who think they know how to stir up the fire better than us.

Anyway, Fellows, please remember any one is at liberty to say his say to Percival. All such communications will be gladly received by the editor, providing you don't knock him—he gets his a hundredfold. And once more, please think we're only doing this on the supposition that you are all good fellows, and not in any spirit to get even or tinctured with meanness. If it doesn't please you we have failed, and the knock is on us, and, perhaps, on you.

—Next week we are to have the pleasure of hearing a distinguished baritone, and his personality has a double interest for us

since he is not only an artist of reputation, but an old student of the University as well. Mr. Papin is

Rene V. Papin's
Concert.

known to the musical world as Leon Rennay. He has sung before the most critical and exacting audiences of Europe and America, and the newspapers of both hemispheres have accorded him high praise.

The London *Times*, for example, has said of him: "Mr. Leon Rennay has a baritone voice which he uses with the greatest skill. In some 'Bergerettes' by Weckerlin, and in a group of songs by Hahn, Messenger, and others, his perfect diction was of the greatest value." The *Daily Telegraph* of the same city has said: "Mr. Leon Rennay speedily placed himself on excellent terms with his audience. He has a flexible and sympathetic baritone voice, which is under control, and he sings in genuine artistic style and with marked refinement. The manner of his delivery of Weckerlin's three 'Bergerettes,' Eva Dell, Acqua's new and attractive 'Les Etoiles Filantes,' and Reynaldo Hahn's tender 'Offrande' and beautiful 'L'Heure Exquise' could not fail to charm all ears." Needless to say, Mr. Papin will receive a cordial welcome when he comes to the University.

The State Oratorical Contest.

Athletic Notes.

We go to press too early to give the result of the State Oratorical Contest to be held at Indianapolis, Feb. 1. For a second time Mr. Edward O'Flynn is our representative. There are good reasons to be confident that he will be the first man to win the state oratorical championship for Notre Dame. He has had remarkably successful experience here, and just missed getting first place at Indianapolis last year. His manuscript is far superior to the conventional college oration both in literary merit and genuine oratorical power; and last, but by no means a small incentive and encouragement to a college speaker before a strange audience, he has the generously enthusiastic support of the faculty and collegiate body of the school he represents. Nor has hard work been lacking. For the past few months he has been unwearied in daily practice on delivery.

For three consecutive years, each of our orators has beat the record of his predecessor. It now stands, a fourth, a third, a second. A first is needed. It is up to you, Ed. All Notre Dame wish you heartily well.

Mr. Moore's Talk.

Whether the weather man's lecture was more instructive than entertaining the student body is wondering. It, surely was both. What the story of the air told us only served to show what a great man can do with a subject which to the ordinary individual is a limited, uninteresting one. For one hour and forty minutes the scientist spoke to us, and for that length of time the interest never flagged. The best part of it was he told us just how long he was going to speak and startled us when he finished and we found that two hours had passed in less than half the time. Necessarily at home with his subject, Mr. Moore threw out many excellent bits of knowledge. Then too his style and delivery were subjects of note in themselves. Notre Dame awaits with pleasure another word from this scientist and entertainer.

Athletic news—not very much. The same number of men are practising daily and we are going to have a winning baseball team—there is no news in that, for you must have known it. The men are getting in shape rapidly (quite natural as they work about an hour every day); no one has done anything good or bad since the last sitting of the rep-maker, and so he can not boost any one nor can he knock them. "Jimmy" Cook used to say something funny now and then when he was in his baseball rags, but now even "Jimmy" has settled into a quiet and peaceful soul who does nothing other than walk gently over to the Gym, don his throwing rags and work out with the rest of the ordinary candidates. James Leroy Keefe at one time had a baseball squad of his own, and after they had practised for an hour each day, the sporting editor had more news than he could handle; but now Keefe has left his team to a miserable fate and they do as the rest of them—practice? Not even one man on the whole squad has been hit with a ball this year, and last season Keefe and his followers hit at least three every day. There really looks to be something doing with that long-tired Scanlon boy whose left arm seems to hold a most assorted mixture of fancy ones, but even he will not do anything bad enough to get his name mentioned here—that is not in the headlines.

*
**

The track news? Coach Draper is working his track men hard every day. That is all the news. A few facts look something like this:

"Jim" Keefe is wearing the same track suit that he came here with, and just like "Jim" the suit has improved with time. Keefe can do a half mile in 2.02; the suit in another year will be able to do it alone in the same time.

Bob Kasper, as was mentioned a week ago, is among those who run first in the forty-yard dash.

Smithson's ankle is about well and he has been out this week.

Bervey and Wood seem to be the only

men in the school who appear to have strong ambitions—they are putting the shot every day.

"Long John" Scales is stepping over the hurdles in good form. I am slowly but surely running out of facts and will be compelled to tell a few downright lies if I continue trying to write athletic notes.

If you have a scrap-book you had better take your little knife and cut out these write-ups on the athletic doings, paste them carefully in the book, and some time when you are down in the mouth and find the world going around the wrong way, take out the book and turn to the page with the "Athletic Notes" of January, number 31, 1907, read them carefully and when you have finished be glad and happy that you are not the athletic editor; say to yourself that you have it on him a thousand ways, for even though your world is going the wrong way, his is not going at all. There may be some news some time, and I leave you in anticipation.

* *

The Pennsylvania Club defeated the Mishawaka A. C. A. in a fast game of basket-ball last week by a score of twenty-five to twenty-four. The first half ended with the numbers eleven to ten, favoring Mishawaka, but fast playing told on the A. C. A. men and they weakened before the clever five from Pennsylvania. Big Werder, as usual, was everywhere. Kennedy was the surprise of the evening as none had seen him play before in this part of the country. The sensation of the game happened when the Pennsy team made a pretty five-man pass with a basket at the end.

R. L. B.

Exchanges.

To the many Exchange editors we answer, no, we haven't an ex-column. Why? Well that's part of the story; but there are various reasons. We might say we are a bit strange on this affair. All of us think an ex-man all right, at any rate, he is a good worker and deserves praise.

We do not wish to be put down as sidesteppers of work, nor as being among those who are "different from the rest." No, ex-men, when you do say things

about us we like it, and without doubt the right thing to do is to establish an ex-column of our own. But it is our policy to try to get along and evade the petty quarrels so many indignant ex-men indulge in. It's the fighting spirit all right, but how about the uplifting of college journalism? And so we have preferred to omit an exchange department, but when we see something good we like to appreciate it. Is our position an inconsistency? Well, what of it! Is it a heresy to say that most of the dearest things in life are inconsistencies? That won't stand logic or reason; but what has an ex-man to do with reason or logic?

Of all the magazines we have received, the *Redwood* from the great Old West strikes a responsive chord in us. Maybe we're prejudiced in favor of that man Twohy. Anyway, we like his work.

From the warm, throbbing, South comes the *University of Virginia Magazine*. Critical, conservative and artistic, it finds a place among the first six. Then from New York comes classic Columbia's *Monthly*, then the Wolverine's *Inlander* and the *Tennessee University* publication. From Worcester the Holy Cross *Purple* completes the six. We expected more from the *Princeton Tiger*, and we like the *Fordham Monthly*. The *Daily Sun* from Cornell is the best daily we receive. In the West the *Maroon* and Purdue's *Exponent* are the leaders. So much for those that have impressed us. But to all the ex-men we extend a hearty hand; it's hard work, and we appreciate the fact.

* *

We welcome *The Columbia*, Vol. I., No 1, from the University of Fribourg in Switzerland. *The Columbia* is a regular American college paper, edited by the American students of that renowned institution. The first number speaks well for the courage of the members of the "Columbia Reading Circle." "You have made good" from the start, and, although you know it, it is nevertheless well to say so. There need be no anxiety about *The Columbia* which details so well the activities and the triumphs of *Alma Mater* in general and of the American students in particular. *The Columbia* is evidently there to stay.

Notes from the Colleges.

James Lightbody of athletic fame says that you can't be a good athlete and a good student. Lightbody has quit track. Maybe this accounts for his opinion.

* *

The students of the University of Arizona have a unique way of celebrating elections. They drag a cannon around to the rear of the girls' dormitory, load it full of powder and then break windows by the explosion.—*Ex.*

* *

A Carnegie University—not Library—is to be established in Chicago. The object of the new institution is to teach medicine, dentistry, pharmacy, science, arts, law and theology, and, incidentally, to spread on "imperishable" stone the name—Andrew Carnegie—philanthropist.

* *

Down there in the land of chivalry the University of Texas has taken upon itself the unpleasant task of separating the men and women of its school. Alas! what will become of the cavalier Southerner without his "lady love?"

* *

A \$40,000 gift to Yale to be used for the building of a new swimming tank. There is only one man in the world that makes these gifts—Andrew.

* *

Michigan is talking about having separate boards control their track and football teams. But we venture that Baird will have about all of it to say anyhow.

* *

They have all had their say—the professors, deans, and lawyers for both Purdue and Indiana on the medical school question, and now the Legislature will render its decision.

* *

Because Lieutenant Governor Sloan's son, John L., age sixteen years, was reinstated in the South Carolina Military Academy after having been suspended for being drunk—the faculty of the school has

resigned. The "Clan" of the South is dead, but the power of the South Carolina lieutenant-governor still lives.

* *

The Minnesota *Daily* is more than enthusiastic over the college spirit manifest among the University students this year. We are not doubters, but we suggest as the cause of this spirit—Western football championship, 1906. This college loyalty, we think, is a most highly unreliable stock to deal in. For as "the supreme court follows the election returns," so we believe the college spirit follows the football results.

* *

Professor Fredricson of the University of Chicago comes out with the statement that the dress suit is a relic of barbarism. Seniors, your Easter ball difficulties should now be cleared away quite easily.

* *

"Johnny" Fisher, the Indianapolis American Association pitcher, is coaching Wabash baseball team. This makes the tenth time we've seen this new's item.

P. M. M.

The Social Whirl.

E. PERCIVAL SNOB.

Well, Fellows, decidedly, I am glad I'm not the editor! When John Brogan, of baseball fame, President of the Oregonian Society, lawyer and pretty good-sized man button-holed the occupant of the sanctum and administered to him a heartily indignant protest concerning my last offence I thanked my *nom de plume*. Such a burst of genuine resentment I haven't heard in so long a time and I hope I so luckily escape again. Maybe I was wrong and got a few facts wrong, but there were just a few more wrong too. So much for that, I promise John *et al* not to spend much time in future in immortalizing, etc I think it was Swift or Johnson, or some one about as wise, who refused to "call" some one in his sheet, and he couched his refusal thus: "Why, man, I'd make you famous if I would

reply to you or merely mention your name." Those aren't the exact words, but ever since we have all wondered who the man was. So the body who met and held an indignation meeting and sent a committee "away up there," and frightened the editor and said many things, needn't worry that I'll give them another cause for another such a just action.

Speaking though in general of the Oregonian Club, I have learned from my friend of the South Bend *Tribune* many facts. I meant to get the clipping and tell everyone who ought to know about it, and I know the club wouldn't care if I'd say something good about them. The clipping told about the club which had three Varsity men: an artist, one of the engineers in the school, an editor, etc., etc., etc. I tried to get it; but for some reason the *Tribune's* supply was sold out that night. Now, what's worrying me is, where did all those *Tribunes* go?

* *

It is with fear and trembling I approach McNally of Corby. Anyway, he won't care, for Mac's a mighty good fellow—you see we've got to say something like that now—Ray's principal claim to fame in the eloquent line. He reached the climax of it recently when discussing M. O. He soared into some way-up ether and exclaimed: "Shall you see your sweethearts and mothers and babes hanging suspended in agony—on a street-car strap."

* *

Of almost Devine possibilities is Guerie. He has been the hero of two or three Easter balls and many Oriental affairs, besides a decided favorite at the Children of Mary and Nippold flourishes. Now all of it is fine, and every man should—but—but—I must say it G.—"Your age, please?"

* *

Who has heard of Escher? Better who has not? What Pennsylvania enthusiast and loyal old Quaker hasn't watched with admiration the mighty President? And yet—but one moment, Percy; this is not a scandal column—I am still incredulous about that famous Pennsylvania Club

election. Where were — and — and —, even him they willfully call "Stormy Jordan?"

* *

Just a word about a besetting evil. It's growing on us, and it is an evil because it's an overworked good. It is this man Ik Marvel and his followers. Why at breakfast you get him with Force; he's sure to ladle you up at dinner, and he's hashed to nicety at supper. On the campus his friends haunt you and spoil you in your room. You go to a dance, and the young ladies will surely sob him out to you. Home at school and the young ladies' men finish the cry. So far as I know the Inseperable Malloy and Bracken are to blame—Malloy, who owes his reputation to the delightful way he always ties his tie, combs his hair, not mentioning his library proclivities. I hear he has entered the debates; well,—Bracken is big enough to know better, but that doesn't prove anything. I heard Harry Caperio silence him once.

Personals.

—From Lexington, Arkansas, comes good news of an old student, D. H. Pulford, who is with the Missouri and Arkansas RR. Co.

—W. P. O'Brien (student '87-'88) visited the University recently and looked over old haunts. Mr. O'Brien is at present located in Indianapolis, Ind.

—Word has been received from Rochelle, Ill., that Thomas Franklin Healy, known to Notre Dame men as "Pertoot," "Fat," and many other names, is prospering as a lawyer in his home town. Tom is a member of the 1906 Law Class. He is practising with his brother "Bill" of the Illinois University.

—Paul Martin was at the University one day this week to shake hands in a good-bye way with his friends. Through some business difficulties, Paul will not be with us the rest of the year. The SCHOLASTIC, as well as his many friends, will miss him, as his work on the board was more than up to standard. Success be with you, Paul, wherever you are.

LAW DEPARTMENT.

THE PEOPLE V. WHEELER ET AL.

This case was tried Saturday last in the criminal branch of the Moot-Court. The defendants were charged with assault and battery, and Max Jauraschek, assisted by Rex E. Lamb, appeared for the State, acting as deputy prosecuting attorneys. George W. Sprenger and Clarence B. O'Brien appeared for the defense. Leroy J. Keach, acting as clerk, called the following jurors: Gallitzin A. Farabaugh, J. Frank Hanan, Clarence W. May, Forest C. Smithson, John V. Diener and Fay F. Wood. Judge Hoynes presided. The case is based upon that of *State v. Williams*, 75 N. C. 134, and the facts are very peculiar. It was chosen for trial in the belief that it would serve as an incentive to a careful study of the organization and by-laws of fraternal societies. Unfortunately, however, in the haste incident to preparation the facts were not marshalled in orderly development, and the issues were consequently not as clearly presented to the jury as had been expected. A disagreement was naturally the result, and the jury had to be discharged without rendering a verdict. The result would undoubtedly have been different had the attorneys stood squarely upon the

Statement of Facts.

Confusion and vagueness attended upon the attempted deviation from it. The facts are these: Mrs. Amanda Hall was until recently a member of a fraternal organization in South Bend. The society is known as the "Good Samaritans" and comprises in its membership a large number of citizens. Their wives are also enrolled as members. Mr. Ira Hall and wife were received into membership some seven years ago, having at the time read the by-laws and been informed in respect to the purposes of the organization. It is a voluntary or unincorporated body. Its chief object is to discountenance and suppress slander and gossip. It is social in character, and the members are required to visit and assist one another in sickness. The carrying of gossip and circulation of slanderous reports

are treated as grounds for expulsion. At a meeting held on the night of September 7th, 1906, Mrs. Hall was charged with the commission of both these offenses. She was informed that at the next meeting she would be required to defend herself against these charges.

At the regular meeting a week later she was present with her husband, but declined to make any defense. Thereupon the by-laws of the society were read to her. One of them provided that any member incurring the penalty of expulsion should be suspended for a full minute from the ceiling of the main lodge-room by means of a rope fastened around the waist. The rope was passed through a pulley secured to the ceiling. She had known of this by-law from the time of her entrance into the society. Moreover, she had frequently been present at the ceremony when others were expelled and seemed to take a pleasurable interest in the curious proceeding. Observing how obdurate she was, the president of the society, Mr. John B. Wheeler, intimated to her that the sentence of expulsion might be waived in certain cases. "I will undertake to state," he said, "that it will not be pronounced against those who voluntarily resign and withdraw from the society." But she declined to speak with him on the subject and turned away with manifest indignation. She was then formally expelled for the causes stated, and when the president, and secretary, assisted by the sergeant-at-arms, sought to fasten the rope around her person she resisted to the full extent of her ability. Nevertheless, the rope was thus fastened and an attempt made to draw her up a foot or more from the floor. While this proceeding was in progress she fainted. Thereupon the effort to complete the ceremony was abandoned. She now demands the prosecution for assault and battery of President Wheeler, the secretary, Henry Turner, and the sergeant-at-arms, Hugh J. Dancer.

There are no common law crimes in Indiana, and under the criminal code of the State assault and battery is thus defined:

"Whoever, in a rude, insolent or angry

manner, unlawfully touches another, is guilty of an assault and battery, and upon conviction thereof shall be fined not more than one thousand dollars, to which may be added imprisonment in the county jail not exceeding six months."

Local Items.

—IMPORTANT:—A copy of the New Testament has been taken from the college chapel. The person who has removed this book is kindly requested to return the same.

—The Senior Laws of 1907 are somewhat more progressive than their predecessor. At a meeting the other day they decided to secure class pins. The artist of the class, Walter Joyce, drew out a very appropriate design which was accepted, and the secretary was instructed to treat with the various "pin" houses and get a line on their prices.

—Friday night, Jan. 25, about eighteen students from Wisconsin assembled and organized the Badger club. The following officers were elected: R. L. McPartland, President; J. V. Diener, Vice-President; H. J. Boyle, Secretary; C. H. Vollmar, Treasurer; A. L. Metcalf, Sergeant-at-Arms. Father Regan was elected Honorary President. Needless to say the Badgers will have one of the best clubs in the University.

The meeting of the Electrical Society was postponed last week because of the tired feeling consequent to the club's trip to the Chicago Electrical Show. At the meeting to-night Dwan, Sinnott and Trevino will read papers telling all they know about the several places visited. Everyone had an excellent time, and with the exception of the Baron everyone delighted everyone else. The Baron's failure to bring back a collection of electrical novelties has excited no little comment. At an early date Prof. Green will give a lecture on the manifestations of electricity. A large attendance is expected, not only of the engineers but of others generally interested.

—Thursday evening, January 24, the Brownson Literary and Debating Society held its regular meeting at which new officers were chosen for the ensuing four months. The following members were

elected: Messrs. J. Sheehan, President; Bannom, Vice-President; M. H. Miller, Secretary; T. Corville, Treasurer; S. Dolan, Sergeant-at-Arms; J. Coggeshall, Chaplain; and J. Roth, Reporter. A motion was made that a committee be appointed to obtain permission for the society to go to the theatre Saturday evening, February 2d. Messrs. Berve, Duncan and Roth were appointed to serve on this committee. Mr. Berthold gave a very interesting talk about the Dominican College at Prairie Du Chein, Wisconsin. As the elections took up a great amount of time, no further program was carried out and the meeting adjourned.

—A new departure in the line of clubs was inaugurated last Monday night when the higher Greek students of the University organized a Greek letter fraternity. Membership is limited to twenty, and the charter roll contains nineteen names, so prospects indicate that there will soon be a waiting list. The purpose of the fraternity primarily is to promote good fellowship among its members and to further the study of Greek literature by means of seminar work. Officers elected were: Messrs. W. Corcoran, President; F. Derrick, Vice-President; I. E. McNamee, Secretary; T. Maguire, Treasurer.

—The University offers to Mr. Fred E. Lee of Dowagiac, Michigan, its grateful acknowledgment of the following articles donated to the Laboratory of Elementary Physics.

- 4 Howard Trip Balances, Spring Balance
- 12 Metric Rulers, Boxwood
- 10 Overflow Cans
- 10 Loaded Blocks
- 10 Waterproof Cherry Blocks
- 12 Universal Weights
- 5 Iron Weights in Nest (16 ounces to 1 ounce)
- 5 Graduates (250 C. C.) Cone shape
- 5 Graduates 500 Cylinder form
- 10 Pressure gauges
- 5 Hydrometers (7 to 1,000)
- 5 Hydrometers (10 to 200)
- 12 Battery Jars 6x8
- 12 Clamps 4 inches
- 5 Clamps
- 10 Lever and Supporting Bars
- 12 Pairs Scale Pans, Brass
- 6 Spring Balances
- 12 b Spring Balances
- 12 Brass Tipped meter Sticks
- 10 Lever Clamps (Set of 3 to fit above meter sticks)
- 12 Rider Blocks to fit Meter Sticks
- 15 Thermometers (F. & C.) 10 to 110